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Attorney for Secured Creditor
U.S. Bank Trust National Association as
Trustee of the Bungalow Series III Trust

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In Re:	)	CASE NO.: 18-41947
)	
BILLY JAMES PHILLIPS	)	CHAPTER 13
)	
	)	RS No.: MRG-100
Debtor.)	
	)	MEMORANDUM OF POINTS
	)	AND AUTHORITIES IN
	)	SUPPORT OF MOTION FOR
	)	RELIEF FROM AUTOMATIC
	)	STAY
)	
	)	Date: December 5, 2018
	)	Time: 9:30 a.m.
	)	Ctrm: 220
	)	Place: U.S. Bankruptcy Court
	)	1300 Clay Street
	)	Oakland, CA 94612
)	
)	Judge: William Lafferty
)	
)	

TO ALL PARTIES IN INTEREST AND TO THEIR ATTORNEYS OF RECORD:

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2 U.S. Bank Trust National Association as Trustee of the Bungalow Series III Trust, its
3 successors and/or assignees by and through its undersigned attorney, moves this Court for
4 termination of all stays and injunctions, pursuant to 11 U.S.C. §362(d) and 105 and Federal
5 Rules of Bankruptcy Procedure 4001 and 9014 and regarding the real property commonly
6 known 2248 East 22nd Street, Oakland, CA 94606, (“Property” herein).

7 The relief requested in this Motion is proper for all of the reasons set forth in the
8 Memorandum of Points and Authorities and incorporated herein by this reference.

9 Pursuant to 11 U.S.C. §362(d)(4), Debtor’s filing of the petition was part of a scheme
10 to delay, hinder, and defraud creditors that involved the repeated filing of bankruptcy petitions.

11 Secured Creditor holds the original promissory Note dated 3/26/2007, in the principal
12 amount of \$250,000, which is secured by a Deed of Trust of the same date and is signed by the
13 Debtor.

14 Debtor filed a previous bankruptcy petition in the above-entitled Court on 9/7/2016 as
15 Case Number 16-42508. The Court entered an Order dismissing the case for failure to file
16 information on 5/18/2010. A true and correct copy of the PACER Docket is attached hereto as
17 **Exhibit “6”**.

18 Debtor filed a previous bankruptcy petition in the above-entitled Court on 1/9/2017 as
19 Case Number 17-40055. The Court entered an Order dismissing the case for failure to file
20 information on 1/26/2017. A true and correct copy of the PACER Docket is attached hereto as
21 **Exhibit “6”**.

22 Debtor filed a previous bankruptcy petition in the above-entitled Court on 3/14/2017 as
23 Case Number 17-40702. The Court entered an Order dismissing the case for failure to make
24 plan payments on 4/26/2018. A true and correct copy of the PACER Docket is attached hereto
25 as **Exhibit “6”**.

26 Debtor filed a previous bankruptcy petition in the above-entitled Court on 6/30/2018 as
27 Case Number 18-41524. The Court entered an Order dismissing the case for failure to make
28 plan payments on 8/17/2018. A true and correct copy of the PACER Docket is attached hereto
as **Exhibit “6”**.

Pursuant to 11 U.S.C. § 362(d)(4), Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved the repeated filing of bankruptcy petitions. A scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Turnkey*, at 8, citing *Duncan & Forbes, Dev., Inc.*, 368 B.R. 27 (Bankr. C.D. Cal. 2006). A scheme may be inferred from circumstantial evidence. *Id.* Here the scheme involved the repeated filing of bankruptcy petitions, which were often dismissed shortly after filing because the debtor failed to file information. Given these facts, it can be inferred as the case law allows that a scheme to delay, hinder, or defraud exists.

On or about 8/22/2018, Debtor filed a Voluntary Petition under Chapter 13 of the Bankruptcy Code. Pursuant to 11 U.S.C. §362, the Petition stays the commencement or continuation of any proceedings against the Debtor or any act to obtain possession of any property of the Debtor or to enforce any lien against any property of the Debtor. This Court has jurisdiction pursuant to 28 U.S.C. §1334. The filing of this Motion commences a contested matter within the meaning of Bankruptcy Rule 9014.

Pursuant to 11 U.S.C. §362(d)(1), Movant is entitled to relief from the automatic stay to enforce its lien for cause, including lack of adequate protection of any interest in the Property. Failure to make mortgage payments in a Chapter 13 can constitute cause for lifting the stay. The Debtor has the burden of showing there is no cause to terminate the stay. *In re Ellis*, 60 B.R. 432 (9th Circ. BAP 1985). Where cause is shown, courts have no discretion, but must grant relief. *In re Ford*, 36 B.R. 501 (Dt 1983). Movant is not receiving regular monthly post-petition payments. Debtor is currently post-petition due for 9/1/2018.

As of 10/25/2018, the amount required to fully reinstate Debtor's loan post-petition is approximately

Monthly payments:	2	at	\$1,674.78	\$	3,349.56
Bankruptcy Attorney Fee:				\$	850.00
Bankruptcy Filing Fee:				\$	181.00
Total Delinquencies:				\$	4,380.56

1 The sums set forth in this motion do not include any late charges, escrow advances, or
2 other fees and charges that might otherwise be included in the event that a payoff is requested
3 or provided.

4 The next scheduled monthly payment of \$1,674.78 is due 11/1/2018, and continuing
5 each month thereafter. However, this amount may be subject to change pursuant to the terms
6 of the applicable loan documents.

7 Movant is not adequately protected. Movant is not receiving regular monthly
8 payments, and is unfairly delayed from proceeding with the foreclosure of the Property.
9 Accordingly, relief from the automatic stay should be granted to Movant pursuant to 11 U.S.C.
10 §362(d)(1) and 11 U.S.C. §362(d)(4).
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13 Dated: October 25, 2018

LAW OFFICES OF MICHELLE GHIDOTTI

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15
16 /s/ Adam Thursby
Adam Thursby, Esq.
17 U.S. Bank Trust National Association as
18 Trustee of the Bungalow Series III Trust
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